

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

W.H. and L.H., parents of P.H.,
Plaintiffs,

v.

COLVILLE SCHOOL DISTRICT 115,
Defendant.

NO: 12-CV-0063-TOR

ORDER OF DISMISSAL

Before the Court is a case that has languished for over 120 days. A Petition for Judicial Review and Complaint (ECF No. 1) was filed January 25, 2012. No summons was issued. Since the complaint was filed, there has been no activity in the case except that on April 4, 2012, the Court entered an Order to Show Cause. Plaintiffs were ordered to show cause, on or before **April 18, 2012**, why this case should not be dismissed for failure to prosecute.

Since that time, nothing has been filed, indeed Plaintiffs have ignored the Court's Order.

1 Rule 4(m) of the Federal Rules of Civil Procedure provides: “If a defendant
2 is not served within 120 days after the complaint is filed, the court – on motion or
3 on its own after notice to the plaintiff – must dismiss the action without prejudice
4 against that defendant or order that service be made within a specified time.”

5 Similarly, in considering dismissal of a case under Rule 41(b) as a
6 consequence of a party’s failure to comply with a court order, the court must weigh
7 five factors: (1) the public’s interest in expeditious resolution of litigation; (2) the
8 court’s need to manage its docket; (3) the risk of prejudice to the defendants or
9 respondents; (4) the availability of less drastic alternatives, and (5) the public
10 policy favoring disposition of cases on their merits. *Pagtalunan v. Galaza*, 291
11 F.3d 639, 642 (9th Cir. 2002). These five factors are not a series of conditions
12 precedent before the judge can do anything, but are a way for district judge to think
13 about what to do. *In re Phenylpropanolamine (PPA) Products Liability Litigation*,
14 460 F.3d 1217, 1226 (9th Cir. 2006).

15 **1. Expeditious Resolution**

16 The public has an interest in the expeditious resolution of litigation. This
17 factor weighs in favor of dismissal as this case has languished for over four months
18 with no activity.

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2. Docket Management

Litigants who do not actively pursue their claims or obey the Court's orders disrupt the Court's handling of other matters by consuming time and resources needed by other litigants who are active and compliant. The Court's time is better spent on cases in which the litigants are compliant and actively trying to resolve their differences. In the interest of judicial economy, this factor weighs in favor of dismissal.

3. Prejudice to Defendants

Although the named defendant has not appeared in this case, and may not even be aware of this case's existence, a party's unreasonable delay and noncompliance can cause prejudice to the opposing party. Unquestionably, memories fade and evidence becomes stale. Absent specific evidence from a prejudiced defendant however, the Court finds this factor neutral to a dismissal.

4. Less Drastic Alternatives

A court is obligated to consider the impact of a dismissal as a sanction and the adequacy of less drastic sanctions. A court's prior warning that failure to obey a court order will result in dismissal can itself meet the consideration of alternatives. The Court clearly and unequivocally warned Plaintiffs that dismissal would result for failure to show cause over one month ago. Plaintiffs did nothing.

1 This factor counsels in favor of dismissal because lesser alternatives have proven
2 unsuccessful.

3 **5. Disposition on the Merits**

4 Public policy always favors disposition on the merits. Regardless of any set
5 of circumstances, this factor will always counsel against dismissal. By dismissing
6 the case without prejudice, the Plaintiffs may be able to file the case again if they
7 are serious about resolving the case on the merits.

8 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 9 1. This case is **DISMISSED** without prejudice.
- 10 2. The District Court Executive is hereby directed to enter this Order,
11 furnish a copy to Plaintiffs' counsel and **CLOSE** the file.

12 **DATED** this 29th day of May, 2012.

13 *s/ Thomas O. Rice*

14 THOMAS O. RICE
15 United States District Judge
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